



# Is Your Sellers' Surveillance Putting Them at Risk?

Selling a home can be frustrating to homeowners. They're asked to allow strangers into their home. They may never receive feedback and are left to wonder, "Why didn't that last buyer bite?" What do anxious sellers do? They get an extra set of ears. Many homeowners have installed security cameras and smart-home devices. These installations can be an ultra high-tech security system or a simple baby monitor, and they all can be abused. A number of notable cases have emerged where sellers listened to a potential buyer's showing. Sometimes it's to gain advantage in negotiations, while other times it's simply to better stage the property. So, can a seller covertly record or monitor a buyer's showing?

## The rules in Texas

Both the Federal Electronic Communications Privacy Act (ECPA) and Section 16.02 of the Texas Penal Code prohibit audio recordings without the consent of at least one individual who is part of the conversation. The Texas rule, commonly referred to as the one-party rule, requires at least one party to consent to recording conversations. What that rule allows is any individual to covertly and legally record his own conversations with a broker, neighbor, or other party. Whenever you speak, it's best to follow the old saying: Say what you mean and mean what you say. The other person in the conversation may be recording everyone.

## Why a seller cannot record audio of a showing

Texas law does not allow audio recording or audio monitoring of conversations that you are not a part of. If the seller is not present and participating in the showing, he cannot record it. Even though the conversation happens inside a seller's home, he is prohibited from recording any conversations that he is not a part of.

## But what about video?

Many homes today have security cameras installed that record video. Some have audio recording, similar to a baby monitor, and some without. The ECPA does not prohibit video recording. In fact, silent videos from security cameras are generally allowed as long as it isn't in an area where an individual would have a reasonable expectation of privacy. For instance, silent bathroom video recording is not allowed. But silent video recording of the foyer, kid's playroom, exterior of a home, and a garage are likely permitted.

## Is your listing breaking the law?

Most professional alarm and security camera installers are familiar with the law. Normally, they install video cameras without audio and are leery to install cameras in any location other than a foyer. However, when your seller is a do-it-yourselfer, you may want to ask questions. Have sellers tell you what the system will record. If audio is recorded, the seller may have a problem. If it is silent video, have sellers show you where the cameras are located. Make sure they aren't video recording in a private area, such as a bathroom. Courts have traditionally upheld individual privacy rights over the property rights in a residential home. Consider limiting the use of cameras to the exterior of the residence. Violating state and federal recording laws can involve criminal penalties.

In addition, Texas, like many states, recognizes several types of common law invasion of privacy claims. At its essence, invasion of privacy protects a person against unreasonable intrusion upon his seclusion, solitude, or private affairs. Even though recording may be in the seller's house, courts have found that a visiting party can have a valid claim when the homeowner overreaches.

Illegal recording is a felony offense in Texas, and anyone who has been recorded in violation of the law can bring a civil suit to recover \$10,000 for each occurrence, actual damages in excess of \$10,000, punitive damages, attorney's fees, and court costs.

Help your sellers avoid criminal or civil liability by encouraging them to concentrate on feedback given with consent and leave the mics and hidden cameras out.

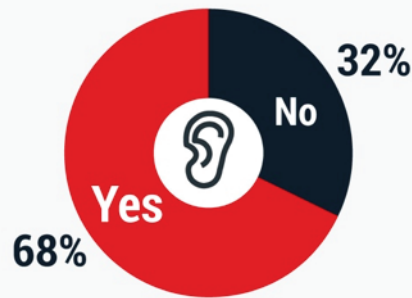
*By Wes Bearden, Texas REALTORS®, [texasrealestate.com](http://texasrealestate.com)*

# Home Buyer, Beware!

## The Seller May Be Watching and Listening!

### Smart Home Privacy Concerns

Do you think smart home devices "listen" to you when you aren't aware and share the data?



**Privacy is the number-one concern for smart home devices.**

Smart home devices have a lot of benefits, but many real estate professionals are concerned with one big drawback: an always-on device in a home that could be listening to everything they and their clients say.

*Shhhh! Don't say you like the house~*

Privacy has become a significant concern for Realtors showing smart homes. A growing number of home sellers are using smart devices to spy on potential buyers as they tour their houses. They then may use what they hear or see as leverage in price negotiations. Just about every smart device that is connected to the internet and offers personalized services can spy on you.

Let's explore a list of smart devices that may be watching and listening. In today's world, the list falls under the classification of the Internet of Things (IoT).

- Smart Phones
- Webcams/ Home security cameras
- Baby monitors
- USB flash drives with voice activation
- Wireless Bluetooth speakers
- Pens that have voice activated voice recording
- Smart TVs like Amazon Fire TV
- Xbox Kinect
- Amazon Echo/ Google Home Assistant/Alexa/Siri/Cortana
- Nest Cam
- Ring doorbell/ Skybell doorbell
- Smart home security outdoor lighting and camera
- Petcube interactive wifi pet camera

When showing a house, it's always a good practice before walking in the home to ask the buyers to imagine the seller is home and listening. Always take conversations about the house and the confidential details of the purchase off-site!